

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1094

Introduced by Lathrop, 12; Lautenbaugh, 18.

Read first time January 21, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to courts; to amend section 84-907.03, Revised
2 Statutes Supplement, 2009; to adopt the Nonrecourse Civil
3 Litigation Act; to provide powers and duties for the
4 Secretary of State; to harmonize provisions; and to
5 repeal the original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 9 of this act shall be known and
2 may be cited as the Nonrecourse Civil Litigation Act.

3 Sec. 2. For purposes of the Nonrecourse Civil Litigation
4 Act:

5 (1) Legal claim means a civil claim or action;

6 (2) Nonrecourse civil litigation funding means a
7 transaction in which a civil litigation funding company purchases
8 and a consumer assigns the contingent right to receive an amount of
9 the potential proceeds of the consumer's legal claim to the civil
10 litigation funding company out of the proceeds of any realized
11 settlement, judgment, award, or verdict the consumer may receive
12 in the legal claim;

13 (3) Civil litigation funding company means a person or
14 entity that enters into a nonrecourse civil litigation funding
15 transaction with a consumer; and

16 (4) Consumer means a person or entity residing or
17 domiciled in Nebraska.

18 Sec. 3. (1) All contracts for nonrecourse civil
19 litigation funding shall comply with the following requirements:

20 (a) The contract shall be completely filled in and
21 contain on the front page, appropriately headed and in at least
22 twelve-point bold type, the following disclosures:

23 (i) The total dollar amount to be funded to the consumer;

24 (ii) An itemization of one-time fees;

25 (iii) The total dollar amount to be repaid by the

1 consumer, in six-month intervals for thirty-six months, and
2 including all fees;

3 (iv) The total dollar amount in broker fees that are
4 involved in the transaction; and

5 (v) The annual percentage rate of return, calculated as
6 of the last day of each six-month interval, including frequency of
7 compounding;

8 (b) The contract shall provide that the consumer may
9 cancel the contract within five business days following the
10 consumer's receipt of funds without penalty or further obligation.

11 The contract shall contain the following notice written in a clear
12 and conspicuous manner: "CONSUMER'S RIGHT TO CANCELLATION: YOU MAY
13 CANCEL THIS CONTRACT WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN
14 FIVE BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDING FROM (insert
15 name of civil litigation funding company)." The contract also shall
16 specify that in order for the cancellation to be effective, the
17 consumer shall either return the full amount of disbursed funds
18 to the civil litigation funding company by delivering the civil
19 litigation funding company's uncashed check to the civil litigation
20 funding company's offices in person, within five business days
21 after the disbursement of funds, or mail a notice of cancellation
22 and include in that mailing a return of the full amount of
23 disbursed funds in the form of the civil litigation funding
24 company's uncashed check or a registered or certified check or
25 money order, by insured, registered, or certified United States

1 mail, postmarked within five business days after receiving funds
2 from the civil litigation funding company, to the address specified
3 in the contract for the cancellation;

4 (c) The contract shall contain the following statement in
5 at least twelve-point boldface type: "THE CIVIL LITIGATION FUNDING
6 COMPANY AGREES THAT IT SHALL HAVE NO RIGHT TO AND WILL NOT MAKE ANY
7 DECISIONS WITH RESPECT TO THE CONDUCT OF THE UNDERLYING LEGAL CLAIM
8 OR ANY SETTLEMENT OR RESOLUTION THEREOF AND THAT THE RIGHT TO MAKE
9 THOSE DECISIONS REMAINS SOLELY WITH YOU AND YOUR ATTORNEY IN THE
10 LEGAL CLAIM.";

11 (d) The contract shall contain an acknowledgement by
12 the consumer that such consumer has reviewed the contract in its
13 entirety;

14 (e) The contract shall contain the following statement in
15 at least twelve-point boldface type located immediately above the
16 place on the contract where the consumer's signature is required:
17 "DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT COMPLETELY OR IF IT
18 CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COMPLETELY FILLED
19 IN COPY OF THIS CONTRACT. BEFORE YOU SIGN THIS CONTRACT YOU SHOULD
20 OBTAIN THE ADVICE OF AN ATTORNEY. DEPENDING ON THE CIRCUMSTANCES,
21 YOU MAY WANT TO CONSULT A TAX, PUBLIC OR PRIVATE BENEFIT PLANNING,
22 OR FINANCIAL PROFESSIONAL. YOU ACKNOWLEDGE THAT YOUR ATTORNEY IN
23 THE LEGAL CLAIM HAS PROVIDED NO TAX, PUBLIC OR PRIVATE BENEFIT
24 PLANNING, OR FINANCIAL ADVICE REGARDING THIS TRANSACTION.";

25 (f) The contract shall contain a written acknowledgment

1 by the attorney representing the consumer in the legal claim that
2 states all of the following:

3 (i) The attorney representing the consumer in the legal
4 claim has reviewed the contract and all costs and fees have
5 been disclosed including the annualized rate of return applied to
6 calculate the amount to be paid by the consumer;

7 (ii) The attorney representing the consumer in the legal
8 claim is being paid on a contingency basis per a written fee
9 agreement;

10 (iii) All proceeds of the civil litigation will be
11 disbursed via the trust account of the attorney representing the
12 consumer in the legal claim or a settlement fund established to
13 receive the proceeds of the civil litigation from the defendant on
14 behalf of the consumer;

15 (iv) The attorney representing the consumer in the legal
16 claim is following the written instructions of the consumer with
17 regard to the nonrecourse civil litigation funding;

18 (v) The attorney representing the consumer in the legal
19 claim shall not be paid or offered to be paid commissions or
20 referral fees; and

21 (vi) Whether the attorney representing the consumer in
22 the legal claim does or does not have a financial interest in the
23 civil litigation funding company; and

24 (g) All contracts to the consumer shall have in plain
25 language, in a box with bold fifteen-point font stating the

1 following in capitalized letters: "IF THERE IS NO RECOVERY OF ANY
2 MONEY FROM YOUR LEGAL CLAIM OR IF THERE IS NOT ENOUGH MONEY TO PAY
3 THE CIVIL LITIGATION FUNDING COMPANY BACK IN FULL, YOU WILL NOT
4 OWE THE CIVIL LITIGATION FUNDING COMPANY ANYTHING IN EXCESS OF YOUR
5 RECOVERY UNLESS YOU HAVE VIOLATED THIS PURCHASE AGREEMENT."

6 (2) If a dispute arises between the consumer and the
7 civil litigation funding company concerning the contract for
8 nonrecourse civil litigation funding, the responsibilities of the
9 attorney representing the consumer in the legal claim shall be
10 no greater than the attorney's responsibilities under the Nebraska
11 Rules of Professional Conduct.

12 Sec. 4. (1) The civil litigation funding company shall
13 not pay or offer to pay commissions or referral fees to any
14 attorney or employee of a law firm or to any medical provider,
15 chiropractor, or physical therapist or their employees for
16 referring a consumer to the civil litigation funding company.

17 (2) The civil litigation funding company shall not accept
18 any commissions, referral fees, or rebates from any attorney or
19 employee of a law firm or any medical provider, chiropractor, or
20 physical therapist or their employees.

21 (3) The civil litigation funding company shall not
22 advertise false or intentionally misleading information regarding
23 such company's product or services.

24 (4) The civil litigation funding company shall not
25 knowingly provide nonrecourse civil litigation funding to a

1 consumer who has previously sold and assigned an amount of such
2 consumer's potential proceeds from the legal claim to another
3 civil litigation funding company without first buying out that
4 civil litigation funding company's entire accrued balance unless
5 otherwise agreed in writing by the civil litigation funding
6 companies and the consumer.

7 Sec. 5. (1) A civil litigation funding company may not
8 assess fees for any period exceeding thirty-six months from the
9 date of the contract with the consumer.

10 (2) Fees assessed by the civil litigation funding company
11 shall compound at least semiannually but shall not compound based
12 on any lesser time period.

13 (3) In calculating the annual percentage fee or rate
14 of return, a civil litigation funding company shall include all
15 charges payable directly or indirectly by the consumer and shall
16 compute the rate based only on amounts actually received and
17 retained by a consumer.

18 Sec. 6. No communication between the attorney and the
19 civil litigation funding company as it pertains to the nonrecourse
20 civil litigation funding contract shall limit, waive, or abrogate
21 the scope or nature of any statutory or common-law privilege,
22 including the work-product doctrine and the attorney-client
23 privilege.

24 Sec. 7. (1) Unless a civil litigation funding company has
25 first registered pursuant to the Nonrecourse Civil Litigation Act,

1 the civil litigation funding company cannot engage in the business
2 of nonrecourse civil litigation funding.

3 (2) A civil litigation funding company shall submit an
4 application of registration to the Secretary of State in a form
5 prescribed by the Secretary of State. An application filed under
6 this subsection is a public record and shall contain information
7 that allows the Secretary of State to make an evaluation of the
8 character, fitness, and financial responsibility of the company
9 such that the Secretary of State may determine that the business
10 will be operated honestly or fairly within the purposes of the act.

11 (3) A civil litigation funding company may apply to
12 renew a registration by submitting an application for renewal in
13 a form prescribed by the Secretary of State. An application filed
14 under this subsection is a public record. The registration shall
15 contain current information on all matters required in an original
16 registration.

17 Sec. 8. (1) An application for registration or renewal
18 of registration under section 7 of this act shall be accompanied
19 by either an application for registration fee or a renewal of
20 registration fee, as applicable.

21 (2) The Secretary of State may, by rule and regulation,
22 establish fees for applications for registration and renewals
23 of registration at rates sufficient to cover the costs of
24 administering the Nonrecourse Civil Litigation Act, in the event
25 any such fees are required. Such fees shall be collected by the

1 Secretary of State and remitted to the State Treasurer for credit
2 to the Secretary of State Administration Cash Fund.

3 Sec. 9. (1) The Secretary of State shall issue a
4 certificate of registration to a civil litigation funding company
5 who complies with subsection (2) of section 7 of this act or a
6 renewal of registration under subsection (3) of section 7 of this
7 act.

8 (2) The Secretary of State may refuse to issue a
9 certificate of registration if the Secretary of State determines
10 that the character, fitness, or financial responsibility of the
11 civil litigation funding company are such as to warrant belief that
12 the business will not be operated honestly or fairly within the
13 purposes of the Nonrecourse Civil Litigation Act.

14 (3) The Secretary of State may suspend, revoke, or refuse
15 to renew a certificate of registration for conduct that would have
16 justified denial of registration under subsection (2) of section 7
17 of this act or for violating section 4 of this act.

18 (4) The Secretary of State may deny, suspend, revoke,
19 or refuse to renew a certificate of registration only after
20 proper notice and an opportunity for a hearing. The Administrative
21 Procedure Act applies to the Nonrecourse Civil Litigation Act.

22 (5) The Secretary of State may issue a temporary
23 certificate of registration while an application for registration
24 or renewal of registration is pending.

25 (6) The Secretary of State shall require a civil

1 litigation funding company registered pursuant to the act to
2 annually submit certain data, in a form prescribed by the Secretary
3 of State that contains:

4 (a) The number of nonrecourse civil litigation fundings;

5 (b) The amount of nonrecourse civil litigation fundings;

6 (c) The number of nonrecourse civil litigation fundings
7 required to be repaid by the consumer;

8 (d) The amount charged to the consumer, including, but
9 not limited to, the annual percentage fee charged to the consumer
10 and the itemized fees charged to the consumer; and

11 (e) The dollar amount and number of cases in which the
12 realization to the civil litigation funding company was less than
13 contracted.

14 (7) The Secretary of State shall annually prepare and
15 submit a report to the Clerk of the Legislature and to the
16 Judiciary Committee of the Legislature on the status of nonrecourse
17 civil litigation funding activities in the state. The report
18 shall include aggregate information reported by registered civil
19 litigation funding companies.

20 Sec. 10. Section 84-907.03, Revised Statutes Supplement,
21 2009, is amended to read:

22 84-907.03 There is hereby created the Secretary of State
23 Administration Cash Fund. The fund shall consist of revenue
24 received to defray costs as authorized in sections 84-901 to
25 84-908 and section 8 of this act. The revenue shall be collected

1 by the Secretary of State and remitted to the State Treasurer
2 for credit to the fund. The fund shall be used to (1) offset
3 expenses incurred as a result of such sections, (2) administer
4 the Address Confidentiality Act, ~~and~~ (3) administer the Nebraska
5 Uniform Athlete Agents Act, and (4) administer the Nonrecourse
6 Civil Litigation Act.

7 Any money in the fund available for investment shall be
8 invested by the state investment officer pursuant to the Nebraska
9 Capital Expansion Act and the Nebraska State Funds Investment Act.

10 Sec. 11. Original section 84-907.03, Revised Statutes
11 Supplement, 2009, is repealed.